

## UIdaho Law Digital Commons @ UIdaho Law

---

### Idaho Supreme Court Records & Briefs

---

11-3-2010

# State v. Marsh Clerk's Record v. 2 Dckt. 37185

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs)

---

### Recommended Citation

"State v. Marsh Clerk's Record v. 2 Dckt. 37185" (2010). *Idaho Supreme Court Records & Briefs*. 2974.  
[https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs/2974](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/2974)

This Court Document is brought to you for free and open access by Digital Commons @ UIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIdaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

LAW CLERK

IN THE  
SUPREME COURT  
OF THE  
STATE OF IDAHO

STATE OF IDAHO

PLAINTIFF  
RESPONDENT

Vs

JAY RALPH MARSH

DEFENDANT  
APPELLANT

*Appealed from the District Court of the Seventh Judicial  
District of the State of Idaho, in and for Madison County*

*Honorable Gregory W Moeller District Judge*

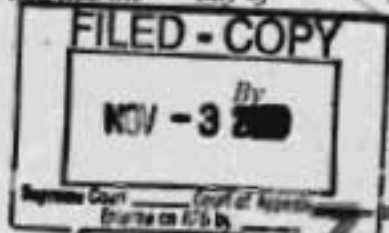
*Molly Huskey  
Idaho State Public Defender  
3647 Lake Harbor Lane  
Boise, ID 83703*

*Attorney for Appellant*

*Lawrence G Wasden  
Idaho Attorney General  
PO Box 83720  
Boise, ID 83720-0010*

*Attorney for Respondent*

*Filed this the      day of      , 2010*



*Clerk  
Deputy*

37185

November 1, 2010

TO ALL PARTIES:

ENCLOSED ARE THE DOCUMENTS REQUESTED. SOME OF THE DATES  
AND TITLES ARE DIFFERENT THAN WHAT WAS ORIGINALLY ORDERED.

1. COURT MINUTES FROM STATUS CONFERENCE S/B JULY 13, 2009
2. COURT MINUTS FROM JURY TRIAL JULY 16, 2009
3. COURT MINUTES FROM SENTENCING ON AUGUST 24, 2009
4. COURT MINUTES FROM SENTENCING ON OCTOBER 5, 2009
5. NO MINUTES DATED DECEMBER 14, 2009
6. COURT MINUTES FROM RULE 35 MOTION DATE S/B MAY 3, 2010

PRELIMINARY HEARING TRANSCRIPT FILED JUNE 29, 2009

RULE 35 TRANSCRIPT .

ANY QUESTIONS PLEASE CALL:  
THANK YOU,  
GWEN CURETON

MADISON COUNTY DEPUTY COURT CLERK  
208-356-6880

COURT MINUTES

State of Idaho vs. Jay Ralph Marsh

Hearing type: Status Conference

Hearing date: 7/13/2009 Time: 9:49 am

Court reporter: David Marlow

Minutes Clerk: Angie Wood

Defense Attorney: R. Archibald

Prosecutor: Sid Brown

Judge Gregory Moeller Presiding

CR-2009-341

1002 J INTRO

COURT WILL HEAR STATE'S MOTION TO AMEND INFORMATION AND MOTION  
IN LIMINE

MR. BROWN ARGUES MOTION TO AMEND INFORMATION

MR. BROWN SUBMITS

APPEARING WITHOUT COURT REPORTER

BOTH PARTIES WILLING TO WAIVE COURT REPORTER

MR. BROWN INDICATES CHANGES IN LATEST AMENDED INFORMATION

MR ARCHIBALD RESPONDS

MR. BROWN RESPONDS

DEFENDANT EXPLAINS NAMES AND ALIAS'S

LEGAL NAME JAY RALPH MARSH

COURT WILL GRANT AMENDMENTS TO INFORMATION

COURT FINDS THAT THERE IS RISK BY PROVIDING LONG LIST OF ALIAS

USING NAME FORMERLY USED AND LEGAL NAME

IN VOIRE DIRE AND READING INFORMATION

ONLY NAME JAY RALPH MARSH OR DARREL R. CLARK WILL BE USED

UNLESS THERE IS A SPECIFIC NECESSITY

STATE'S MOTION IN LIMINE HEARD

ASKING COURT FOR TWO DIFFERENT THINGS

MR. ARCHIBALD OBJECTS TO DOCUMENTS IF THEY ARE NOT CERTIFIED

MR. BROWN ARGUES MOTION

MR. ARCHIBALD OBJECTS

RULE 902.4

COURT WILL GRANT MOTION IN LIMINE

MR. BROWN ARGUES TO IMPEACH DEFENDANT USING PREVIOUS  
CONVICTIONS

MR. ARCHIBALD UNDERSTANDS THAT

COURT WILL GRANT MOTION IN LIMINE BY ONLY CONVICTION FOR THE LAST  
10 YEARS

LIMIT USE TO CRIMES REGARDING HONESTY

MR. BROWN ASKS THE COURT TO REVISIT THAT MATTER

ONLY ALLOW PREFERENCE TO PRIOR FELONY CONVICTIONS SPECIFICALLY  
CRIMES OF HONESTY

RIOT IN 1989

AMEND WHAT IT EARLIER HELD

ALLOW PRIOR FELONY CONVICTION THAT HAVE TO DO WITH CRIMES OF HONESTY

REF TO RIOT AND MALICIOUS INJURY AND DOMESTIC ASSAULT, POSS OF CONTROLLED SUBSTANCE WILL NOT BE ALLOWED

LIST BY IGI NUMBERS

SPECIAL INSTRUCTION ON

10 PREMPTS

MR. ARCHIBALD CONCERNED ABOUT INTERVIEWS – INTERVIEWED BY PROBATION OFFICER

MR. ARCHIBALD INDICATES THAT A MOTION TO SUPPRESS WOULD NOT BE ARGUED DUE TO THE FACT THAT DEFENDANT WAS ON FELONY PROBATION

STATE WILL PREPARE DISMISSAL ON MISD.

DEFENDANT MAKES STATEMENTS TO THE COURT

DEF MAKES MOTION TO HAVE CASE DISMISSED UNDER SPEEDY TRIAL

MOTION DENIED

DEFENDANT MAKES REQUESTS TO THE COURT

SCOURT MINUTES

State of Idaho vs. Jay Ralph Marsh

Hearing type: Jury Trial

Hearing date: 7/16/2009 Time: 9:10 am

Court reporter: David Marlow

Minutes Clerk: Angie Wood

Defense Attorney: R. Archibald

Prosecutor: Sid Brown

Judge Gregory W. Moeller Presiding

CR-2009-341

924 J INTRO

COURT INTRODUCES CASE AND PARTIES TO POTENTIAL JURORS

INITIAL 33 JURORS CALLED

COURT INQUIRES OF INITIAL PANEL

STATE INQUIRES OF INTIAL PANEL

MR. ARCHIBALD INQUIRES OF PANEL

DA HAS PASSED THIS PANEL FOR CAUSE

MR. BROWN FOLLOWS UP WITH MS KILLIAN

TAKE A BRIEF RECESS

COURT MEETS IN CHAMBERS WITH JUROR #2

BACK AFTER RECESS

JUROR NO 2 IS EXCUSED

STATE PASSES JURY PANEL

JURY PASSED FOR CAUSE

PARTIES EXERCISED THEIR 10 PEREMPTORY

STEPHEN BARNHILL

BETH HENDRICKS

WILLIAM FAIRBANKS

JULIE BAUER

RENATE DICKERSON

DAVDISON

KOSTIAL

JURY ACCEPTABLE

BRANHILL

HENDRICKS

BAUER

DICKERSON

DAVDISON

JENSEN

KOSTIAL

NELSON

MARCUM

KING

HANSEN



BOSMAN

COURT WILL RECESS FOR LUNCH

RECONVENE AT 1:30 P.M.

138 COURT RECONVENES AFTER LUNCH

COURT HEARS MOTION BY DA REGARDING MENTION OF PROBATION

STATE AGREES WITH THAT MOTION

THE ORDER OF THE COURT WILL BE THAT NO MENTION WILL BE MADE  
REGARDING DEFENDANT AND PROBATION

DA MAKES MOTION TO EXCLUDE WITNESSES EXCEPT ONE OFFICER

JURY IS BROUGHT INTO THE

BOTH PARTIES AGREE THAT ALL JURORS ARE PRESENT

COURT INSTRUCTS JURY

PROSECUTING ATTORNEY INFORMATION IS READ TO JURY

201 MR. BROWN MAKES OPENING ARGUMENT

216 MR. ARCHIBALD MAKES OPENING ARGUMENT

221 SZ DX W-1 ALEX R

Witness HANDED STATES'E EXHIBITS 8, 9, 10

IDENTIFIED AS PHOTOS OF

STATE MOVES FOR THE ADMISSION OF EXHIBITS 8, 9, 10

8,9, 10 ADMITTED WITHOUT OBJECTION

WITNESS HANDED 2,3, AND 6

IDENTIFIED AS PHOTOS OF TOTE WITH GAMES AND DVD

6 TV ON TOP OF CART

STATE MOVES FOR ADMISSION

2 3 AND 6 ADMITTED WITHOUT OBJECTION

EXHIBITS PUBLISHED TO JURY

244 DA DX W-1 ALEX

249 SA RED W-1

WITNESS EXCUSED

SA DX W-2 WILLIAM MATTHEW WACH

WITNESS HANDED STATE'S EXHIBIT 11A-J

IDENTIFIED AS PRINTOUT

STATE MOVES FOR EXHIBITS 11A-J

MR. ARCHIBALD OBJECTS NOT BEEN PROVIDED COPY OF EXHIBIT

MR. BROWN INDICATES THAT IT WAS DISCLOSED

MR. ARCHIBALD INDICATES THAT HE WAS PROVIDED A COPY BUT IT WAS  
SMUDGED

MR. ARCHIBALD REVIEWS EXHIBIT

MR. ARCHIBALD ASKS QUESTION IN AIDE OF OBJECTION

MR. ARCHIBALD INDICATES THAT HIS COPY DOES NOT HAVE HANDWRITING  
LIKE ORIGINAL

MR. ARCHIBALD RENEWS HIS OBJECTION

COURT WILL ADMIT STATE'S EXHIBIT 11A-J

ONLY CONSIDER PRINTED PORTION- DISREGARD WRITTEN PORTIONS

STATE'S EXHIBIT 4 AND 5 HANDED TO WITNESS

IDENTIFIED AS PHOTO OF ITEMS REMOVED FROM THE TOTE AND  
PHOTOGRAPHED BY WITNESS

ST MOVES FOR ADMISSION OF 4 AND 5

ADMITTED WITHOUT OBJECTION

WITNESS HANDED EXHIBITS 8 9 AND 10

STATES' EXHIBIT 12 AND 13

IDENTIFIED AS CDR CONTAINING STILLS

13 CONTAINS DVD OF FOOTAGE OF ELECTRONICS DEPARTMENT

STATE MOVES TO ADMIT 12 AND 13

COURT WILL ADMIT 12 AND 13

STATE WOULD LIKE TO PLAY DVD PORTION OF MAY 22, 2009

COURT WILL TAKE AFTERNOON RECESS

JUDGE ADMONISHES JURY REGARDING DISCUSSING CASE

JURY VIEWS DVD EXHIBIT 13

EXHIBIT 1 ADMITTED WITHOUT OBJECTION

STATE'S EXHIBIT 7 HANDED TO WITNESS

IDENTIFIED AS PHOTO OF LINKS FOUND ON GROUND

STATE MOVES FOR ADMISSION OF EXHIBIT 7

STATE'S 7 ADMITTED WITHOUT OBJECTION

STATE'S EXHIBIT 14 AND 15

HANDED TO WITNESS

IDENTIFIED AS PHOTO OF PACKING ON IPOD SPEAKER BOX

WITNESS HANDED EXHIBIT 16 AND 17

16 ID AS PACKAGING FROM IPOD SPEAKERS

17 ID AS IPOD SPEAKERS

ST MOVES FOR ADMISSION OF EXHIBIT 14 AND 15

OBJECTED TO BE DA

COURT WILL NOT ADMIT

JURY HAS FINISHED REVIEW EXHIBITS

920 JULY 17, 2009

J INTRO

NEED MINUTES BETWEEN 9:20 AND 10:03

REX CLARK WITNESS

BLAKE MORTENSEN WITNESS

TYSON BECK WITNESS

1003 MR. BROWN QUESTIONING W-6

STATE'S EXHIBIT 18 DIAGRAM OF WALMART

ADMITTED FOR ILLUSTRATIVE PURPOSES WITHOUT OBJECTION

1007 DA X W-6

COURT ADMONISHES JURORS

1036 SA DX W-7 DEAN CRAIG ADAMSON

STATE'S EXHIBIT 19 HANDED TO WITNESS

COPY OF VHS IN DISC FORM

STATE MOVES FOR THE ADMISSION OF EXHIBIT 19

EXHIBIT 19 ADMITTED WITHOUT OBJECTION

STATE'S EXHIBIT 20 HANDED TO WITNESS

IDENTIFIED AS COPY OF VHS IN DISC FORM

STATE MOVES FOR ADMISSION OF 20 ADMITTED WITHOUT OBJECTION

EXHIBIT 19 PLAYED TO THE JURY

NEED

1145 DETECTIVE TURMAN ON DIRECT EXAMINATION

MR. ARCHIBALD WILL STIPULATE IT IS IN MADISON COUNTY

WITNESS HANDED STATES' EXHIBIT 26 AND 27

STATE'S EXHIBIT 25 HANDED TO WITNESS

IDENTIFIED AS BOLT CUTTERS STATE MOVES FOR ADMISSION OF EXHIBIT 25

DA ASKS QUESTIONS IN AIDE OF OBJECTION

ADMITTED

STATE'S EXHIBIT 28 MARKED

IDENTIFIED BY WITNESS AS PHOTO OF TV FOUND AT MR. MARSH'S

STATE MOVES FOR ADMISSION

STATE'S EXHIBIT 28 ADMITTED WITHOUT OBJECTION

STATE'S EXHIBIT 21 – BASEBALL CAP

STATE'S EXHIBIT 29 – BLACK JACKET

STATE'S EXHIBIT 22 – DARK BLUE BALL CAP WITH TAYLORMADE

STATES EXHIBIT 23 – SOUTH POLE INSULATED THERMAL SHIRT

STATE'S EXHIBIT 24- DICKIES DARK BLUE SHIRT WITH STRIPES DOWN THE  
SIDE

STATE WILL MOVE FOR ADMISSION 14 15 16 17

22-24 AND 29

DA ASKS QUESTION IS AIDE OF OBJECTION

EXXHBIIT 21, 29 AND 24 OFFERED BY IDENTIFICARTION PURPOSES

ADMITTED BY COURT

16 AND 17 ADMITTED

14 AND 15 ADMITTED

26 AND 27 ADMITTED WITHOUT OBJECTION

COURT WILL TAKE LUNCH RECESS AT THIS TIME

136 BACK AFTER NOON RECESS

PARTIES STIPULATE THAT ALL JURORS ARE PRESENT

LT TURMAN RETURN TO THE WITNESS STAND

14, 15 AND 28 ARE BEING PUBLISHED TO THE JURY

157 MR. ARCHIBALD CROSS EXAMINES LT TURMAN

STATE REDIRECTS LT TURMAN

MR. ARCHIBALD CROSS EXAMINES ARE REDIRECT

STATE IS READY TO REST

247 MOTION TO DISMISS

248 DENIED

DEFENSE RESTS

JURY INSTRUCTION CONFERENCE

431 BACK ON THE RECORD

MR. BROWN OBJECTS TO THE FACT THAT ONE OF THE REQUESTED  
INSTRUCTIONS WERE NOT GIVEN

JURY BACK AFTER RECESS

BOTH PARTIES STIPUALTE THAT ALL JURORS ARE PRESENT

JURORS PROVIDED WITH PACKET OF JURY INSTRUCTIONS

1-9 ALREADY GIVEN TO JURORS

START WITH INSTRUCTION NUMBER 10

449 MR. BROWN MAKES CLOSING ARGUMENTS

517 MR. ARCHIBALD MAKES CLOSING ARGUMENTS

534 STATE MAKES FINAL CLOSING ARGUMENT TO COURT

BALIFF PLACED UNDER OATH

620 BACK ON THE RECORD REGARDING QUESTIONS FROM JURY

COURT READS QUESTIONS INTO THE RECORD ALONG WITH THE ANSWERS  
FROM THE COURT

STATE STIPULATES TO RESPONSES

740 BOTH PARTIES STIPULATE THAT ALL JURORS ARE PRESENT EXCEPT  
ALTERNATE



COURT ENTERS VERDICT

GUILTY ON ALL COUNTS

THE COURT INFORMS THE JURY OF THE SECOND PHASE OF THE TRIAL

PARTIES WAIVE OPENING STATEMENT

LT SHANE TURMAN CALL TO TESTIFY REGARDING PERSISTANT VIOLATOR

SA DX W-2 MIKE ALBOUQ

STATE EXHIBIT 30 MARKED

PACKET OF CONVICTIONS

STATE MOVES FOR ADMISSION OF EXHIBIT 30

DA OBJECTS

COURT WOULD LIKE MORE FOUNDATION LAID

STATE MOVES FOR THE ADMISSION OF EXHIBIT 30

DA OBJECTS

COURT WILL ADMIT EXHIBIT 30

PARTIES WAIVE READING OF INSTRUCTION 30

MR. BROWN MAKES CLOSING ARGUMENTS

818 BACK ON THE RECORD

JURY HAS RENDERED GUILTY VERDICT

2 QUESTIONS FROM THE JURY

ANSWERS READ INTO THE RECORD

MR. BROWN STIPULATES TO ANSWERS

MR. ARCHIBALD HAS CONCERN ON QUESTIONS REGARDING DISCUSSING  
CASE AFTER VERDICT

BOTH PARTIES STIPUALTE THAT

STATE WAIVES POLLING JURY

AUGUST 24, 2009 AT 9:00 A.M.

PSI ORDERED SENTENCING

MR. ARCHIBALD MAKES MOTION

COURT WILL DENY MOTION

COURT MINUTES

CR-2009-0000341

State of Idaho vs. Jay Ralph Marsh

Hearing type: Sentencing

Hearing date: 8/24/2009

Time: 11:21 am

Judge: Gregory W Moeller

Courtroom:

Court reporter: David Marlow

Minutes Clerk: Angie Wood

Tape Number:

Defense Attorney: R. Archibald

Prosecutor: Sid Brown

1121 J INTRO

PARTIES READY TO PROCEED

ALL PARTIES HAVE RECEIVED PSI

DEFENDANT WISHES TO HAVE MENTAL HEALTH EVALUATION AND  
SUBSTANCE ABUSE EVALUATION PRIOR TO SENTENCING

STATE OBJECTS TO CONTINUING SENTENCING

COURT WILL ORDER SUBSTANCE ABUSE EVALUATION AND MENTAL HEALTH  
ASSESSMENT PRIOR TO SENTENCING

COURT MINUTES

CR-2009-0000341

State of Idaho vs. Jay Ralph Marsh

Hearing type: Sentencing

Hearing date: 10/5/2009

Time: 10:02 am

Judge: Gregory W Moeller

Courtroom: Brent J. Moss District Court

Court reporter: David Marlow

Minutes Clerk: Angie Wood

Tape Number:

Defense Attorney: R. Archibald

Prosecutor: Sid Brown

1002 J INTRO

COURT HAS RECEIVED AND REVIEWED EVALUATIONS

DA IS ASKING FOR A CONTINUANCE

DA INDICATES HE HAS BEEN ACCEPTED INTO WOOD PILOT PROJECT IN  
BONNEVILLE COUNTY CASE

STATE IS OPPOSED TO THE CONTINUANCE

COURT WILL DENY REQUEST TO CONTINUE SENTENCING

COURT REVIEWS CASE

COURT INQUIRES IF ANYTHING NEED TO BE CORRECTED ON PSI

DA INDICATES THERE ARE NO CORRECTIONS

NO CHANGES OR CORRECTIONS NEED TO BE MADE

DEFENDANT WILL EXERCISE HIS RIGHT TO ALLOCUTION

MR. ARCHIBALD RECOMMENDS PROBATION

STATE RECOMMENDS 10 YEAR MINIMUM TO LIFE

MR. MARSH MAKES STATEMENT TO THE COURT

COURT DOES NOT FIND PROBATION APPROPRIATE AT THIS TIME

PSI RECOMMENDS INCARCERATION

GUILTY OF FOUR COUNTS BURGLARY AND THEFT

COUNTS 1-3 4 YEARS FIXED 10 YEARS MAXIMUM

COUNT 4 3 YEARS FIXED 7 YEARS MAXIMUM

COUNT 5 8 YEARS WITH 20 YEAR MAXIMUM

RUN CONCURRENT

CREDIT FOR ANY TIME SERVED ON THESE CHARGES

FINE \$COUNTS 1-3

\$1000 EACH

COUNT 4 \$500

COUNT 5 \$1000

WITH COURT COSTS

RESTITUTION AS SUBMITTED

\$2500 FOR PUBLIC DEFENDER

COURT COSTS ON EACH COUNT

COGNITIVE BASED PROGRAMMING

VOCATIONAL TRAINING

ANY PROGRAMS AVAILABLE FOR SUBSTANCE ABUSE

ONCE OUT ON PAROLE – SEE RECOMMENDATIONS UNLESS  
CONTRAINDICATED BY SUBSEQUENT EVALUATION

DEFENDANT ADVISED OF RIGHT TO APPEAL

COURT MINUTES

CR-2009-0000341

State of Idaho vs. Jay Ralph Marsh

Hearing type: Rule 35 Motion

Hearing date: 5/3/2010

Time: 11:40 am

Judge: Gregory W Moeller

Courtroom: Brent J. Moss District Court

Court reporter:

Minutes Clerk: Angie Wood

Tape Number:

Defense Attorney: R. Archibald

Prosecutor: Sid Brown

1140 J INTRO

PARTIES WAIVE COURT REPORTER

MR. ARCHIBALD ARGUES MOTION TO REDUCE SENTENCE  
REQUESTED FIXED PORTION BE REDUCED TO 5 YEARS

MR. MARSH MAKES STATEMENTS TO THE COURT

STATE RESPONDS – REQUESTS MOTION BE DENIED

COURT HAS REVIEWED RULE 35 WRITTEN BY DEFENDANT

COURT HAS REVIEWED ORIGINAL PSI

COURT DENIES RULE 35 MOTION